BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. IVD/WOL/AO/DRK/ASG/EAD3- 40/2009]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

Manoj T. Shah

(having address at 84, Jain temple,
Taluk kalol,
Post: Pansar- 382740,
Mehsana, Gujarat)

FACTS OF THE CASE IN BRIEF

1. Wellworth overseas Ltd. (hereinafter referred to as '**WOL**') was originally incorporated under the name of Premier Fincaps Ltd., as a public limited company on July 13, 1995 to undertake fund and non-fund based activities. The company came out with a public issue in March 1996. The trading in the scrip was suspended from September 8, 1997 to October 23, 2001 due to non-compliance of the Listing Agreement. BSE revoked the suspension with effect from October 24, 2001. On January 16, 1998 the company changed its name to Wellworth Overseas Ltd. The company has changed its registered office address twice- in the year 2002 and 2005.

2. During the financial year 2002-03 WOL incurred a loss of Rs 1.78 lakhs on a total income of Rs 2.34 lakhs. For the year ended 2003-04 WOL made a loss of Rs 2.40 lakhs on income of Rs 2.25 lakhs on an equity capital of Rs 10.26 crore.

3. BSE conducted an investigation into the trading of the scrip Wellworth Overseas Ltd. (hereinafter referred to as '**WOL**') on the basis of an offline

alert. The period of investigation was January 01, 2003 to October 30, 2003. The major Observations of BSE were that the major buying and selling clients in the scrip were connected /related with each other, with WOL and a certain group of entities called the Parklight Group. WOL appears to a Parklight group company. The volumes in the scrip were created artificially amongst these entities and they contributed to almost 80 per cent of the total market volumes during the entire period of investigation. Self trades, circular trading, synchronized/ structured trades and reversal of trades amongst various other members were also observed with almost negligible deliverable position thus contributing to the volumes in the scrip. Based on the above facts, SEBI conducted an investigation relating to buying, selling or dealing in the shares of WOL for the period from January 01, 2003 to October 23, 2003 (hereinafter referred to as the '**Investigation Period'**).

4. It has been observed in the Investigation Report (hereinafter referred to as the '**IR**') that the scrip was last traded on July 03, 1997 for 100 shares at Rs 0.15. There was no trading in the scrip from the date of revocation of suspension till the beginning of the investigation period. During the period of investigation the scrip went for stock split from Rs 10 face value to Re 1.00 face value with effect from July 29, 2003. Accordingly the period of investigation is divided into two parts viz. Pre Stock Split period i.e from January 01, 2003 to July 28, 2003 and Post Stock Split period i.e. from July 29, 2003 to October 30, 2003

5. During the Pre Stock Split period the scrip recorded a volume of 36,53,573 shares on BSE. The scrip was traded for 66 days. There was no trading from January 01, 2003 to February 24, 2003. On February 25, 2003 the scrip was traded at Rs 0.15. Thereafter the price of the scrip moved up from Rs 0.15 on February 25, 2003 to a high of Rs 7.35 on June 25, 2003 and then closed at Rs 6.66 on July 09, 2003. The record date for split was July 21, 2003. During the Post Stock Split period the scrip recorded a volume of 8,62,451 shares on BSE. The scrip was traded for 50 days. The adjusted price of the scrip after the stock split was Re 0.69 on July 29, 2003. The scrip moved up from Re 0.69 on July 29, 2003 to a high of Rs

3.15 on October 10, 2003 and then came down to Rs 1.89 on October 30, 2003.

6. The IR observed that in the pre Stock Split Period several groups of clients and stock brokers had traded significantly in the scrip and that the trades executed among the group were synchronized/ circular/ reversal in nature. One of the groups was identified as consisting of the sub broker Rajesh N Jhaveri (through main stock broker ASE Capital Markets Ltd.) and its clients Manoj T Shah (hereinafter referred to as '**the noticee**') and Falguni N Shah.

APPOINTMENT OF ADJUDICATING OFFICER

7. I was appointed as the Adjudicating Officer (subsequent to the transfer of Shri Biju S.) vide order dated December 10, 2008, under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **'SEBI Act'**), read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under Section 15HA of the SEBI Act, the violations of Regulations 3, 4 (b), of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as '**FUTP Regulations 1995'**) and Regulations 4(1), 4(2)(a), (b) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the **'PFUTP Regulations'**) alleged to have been committed by the noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

8. A Show Cause Notice A&E/BS/ASG/124369/2008 dated April 29, 2008 (hereinafter referred to as '**SCN**') was served on the noticee in terms of the provisions of the Adjudication Rules by Registered Post Acknowledgment Due asking it to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it

under Section 15HA of the SEBI Act in respect of the violations alleged to have been committed by the noticee.

9. In the SCN it was alleged that during the Investigation Period, the noticee created artificial volume and manipulated the price of the scrip of WOL. In this regard, it was also observed that during the said period the noticee in collusion with a broker and a client had executed synchronized/ circular/ reversal/structured trades which resulted in the creation of artificial volume. These actions amounted to execution of non-genuine trades and misuse of the stock exchange mechanism. The noticee failed to reply to the SCN. Vide its letter dated May 09, 2008 the noticee expressed his intention to avail the consent process but as on date did not submit any application.

10. A hearing notice dated March 25, 2009, granting a personal hearing to the noticee on May 12, 2009 was sent by Registered Post Acknowledgement Due. The noticee failed to appear for the hearing without furnishing any reasons. A final hearing notice dated May 14, 2009 was served on the noticee by Registered Post Acknowledgement Due granting him a personal hearing on June 08, 2009. The noticee again failed to appear for the personal hearing and did not provide any reasons for its non-appearance.

CONSIDERATION OF EVIDENCE AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material made available on record.

12. The allegations against the noticee is that the noticee, along with the members of the group mentioned in para 6, had executed synchronized/ circular/reversal trades and indulged in non-genuine transactions in the scrip of WOL on BSE during the pre stock split period.

13. The noticee failed to submit any reply to the SCN served on it and has failed to attend any of the hearings granted to it. From the above actions

of the noticee, it can be concluded that the noticee has not shown any inclination to cooperate with the current adjudication proceedings. Sufficient opportunities/ time has been provided to the noticee to make its detailed submissions, however it appears that it has chosen neither to make any submissions nor to appear for the personal hearings. In this scenario, I am compelled to pass an ex-parte order against the noticee based on the materials made available on record.

14. The Investigation Report has provided the following trade details regarding the trading among the group mentioned in para 6:

Broker (Sub broker)	Client	No of Days Traded During the Period / No of Days Done Circular Trading	Buy Qty Being Part of Circular traded Qty	Buy Qty as % to Market Volume	Sell Qty Being Part of Circular traded Qty	Sell Qty as % to Market Volume
Rajesh N Jhaveri	Manoj T Shah	**16 / 16**	1,84,695	15.59	1,72,500	14.56
Rajesh N Jhaveri	Falguni N Shah	**16 / 16**	1,67,500	14.14	1,79,695	15.17
Sub Total			**3,52,195**	**29.73**	**3,52,195**	**29.73**
Market Vol on BSE during May 26, 2003 to June16, 2003		**16 / 16**	**11,84,894**	**100.00**	**11,84,894**	**100.00**

15. It has been observed in the IR that the group was observed to be entering into circular / reversal of trades which were synchronized / structured in nature for 3,52,195 shares in 1446 trades (79 buy orders and 79 sell orders) and accounted for 29.73% of the market volume of 11,84,894 shares during the patch May 26, 2003 to June 16, 2003. The difference between the respective buy order time and sell order time ranged from 0 Sec to 44 Sec. The pattern of trading was such that shares sold by one client were purchased by the second client and then they would reverse the position within the same day thus creating artificial volume.

16. The IR alleged that, among the group which indulged in such synchronized/ circular/ reversal trades, the noticee trading through his stock broker purchased 1,84,695 shares (which amounted to 15.59% of

the market volume) and sold 1,72,500 shares (which amounted to 14.56 % of the market volume) through such synchronized/ circular/ reversal trades. From the trade log of the group as a whole it appears that the buy and sell order quantities and rates were similar or identical in most of the cases and the time difference between buy and sell order entered was less than or equal to 20 seconds and in most cases the buy order and sell order time are exactly the same. Hence, the orders of most of these trades appear to be structured/ synchronized. It suggests that the orders were punched in with preconceived motive and with prior arrangement that the orders would be picked up by a particular client(s) and broker(s) on the opposite side.

17. From the trade log of the noticee the details about the noticee's trading during the Investigation Period is revealed. This is similar to the pattern of trading of the group described in the Investigation Report as stated in the previous paragraphs. It is observed that there is a difference of 0 to 20 seconds only between the placing of the buy order and the sell order. In some cases the buy and the sell orders are placed at the same time. The buy order quantity as well as the sell order quantity are identical. The buy order price and the sell order price are also identical. The noticee's trade log shows that he had undertaken such transactions on every trading day from May 26, 2003 to June 16, 2003.

18. For example, on May 26, 2003 the noticee undertook buy trades for 12,400 shares with only one counter party in the scrip - where the buy order and sell order price and quantity exactly matched. The buy and sell orders were placed exactly at the same time. All the transactions undertaken by the noticee from May 26 to June 16, 2003 reveal this pattern. The following is an example of synchronized trading between the noticee and the client Falguni N. Shah through their common broker.

Trade date	Trade Qty	Trade price (in Rs.)	Buy Order time	Sell Order time	Trade time	Time Diff	Diff between buy and sell order quantity	Diff between buy and sell order rate
26.05.2003	515	6.00	10.24.58	10.24.58	10.24.58	0	0	0
26.05.2003	10	6.00	10.24.58	10.24.58	10.24.58	0	0	0
26.05.2003	505	6.00	10.24.58	10.24.58	10.24.58	0	0	0
26.05.2003	20	6.00	10.24.58	10.24.58	10.24.58	0	0	0
26.05.2003	495	6.00	10.24.58	10.24.58	10.24.58	0	0	0
26.05.2003	30	6.00	10.24.58	10.24.58	10.24.58	0	0	0

In fact, on May 26, 2003 the client Falguni N. Shah sold 12, 400 shares to the noticee through 49 trades. On the same day the noticee sold 12, 500 shares to Falguni N. Shah during the course of the day through 56 trades, thus reversing their positions. However, the IR has observed that the trades did not affect the price of the scrip but created artificial volume.

19. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegations against the noticee in the SCN are that it executed synchronized / circular/ reversal trades and indulged in non-genuine transactions in the scrip of WOL during the Investigation Period. I have noted that there were numerous trades in the scrip which were carried out with only one counter party client on a daily basis for a period of sixteen days. The fact that such a huge number of transactions took place repeatedly for sixteen days reinstates the fraudulent nature of such trades.

20. In this case, it becomes necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**), in *Ketan Parekh Vs. Securities and Exchange Board of India* (Appeal No. 2 of 2004), wherein it was observed that:

"A synchronised transaction will,however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the

market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

21. Also the Hon'ble SAT, in *Nirmal Bang Securities Pvt. Ltd Vs SEBI* (Appeal no. 54-57/2002), observed as follows:

    "Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes… There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc..... In a synchronized trading intention is implicit."

22. In the case of *Ashok K Chaudhary v SEBI*, (Appeal No 69 of 2008), dated November 5, 2008, the Hon'ble SAT observed that :

    "*such large number of reverse trades cannot take place through the mechanism of the system. These have obviously been manipulated. Moreover, reverse trades are fictitious trades meant to increase volumes on the screen of the trading system as there is no change of beneficial ownership in the traded shares*".

23. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that :

    "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow"*.

    The orders passed by the Hon'ble SAT / Supreme Court are relied upon in this case for guidance.

24. In view of the above findings it can be concluded that the noticee has violated Regulations 3, 4 (b), of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. The corresponding regulations in SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to Securities Market) Regulations, 2003 are Regulations 4(1), 4(2) (a), (b) and (g) of. The text of the said provisions is as follows:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995:

“3. Prohibition of certain dealings in securities:
No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

4. Prohibition against Market Manipulation

No person shall –

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;”

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003:

“**4. Prohibition of manipulative, fraudulent and unfair trade practices**

(1) Without prejudice to the provisions of Regulation 3[1], no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

……………

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

…………

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security”

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[1] Regulation 3: Prohibition of certain dealings in securities:
No person shall directly or indirectly-
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

25. The said violations attract penalty under section 15HA of the SEBI Act which provides that:

> "15HA. Penalty for fraudulent and unfair trade practices- If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

26. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;
    a. the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
    b. the amount of loss caused to an investor or group of investors as a result of the default
    c. the repetitive nature of the default

27. It is concluded from the facts made available on record that the noticee has executed synchronized /circular/ reversal trades, in violation of the PFUTP Regulations. It is also to be noted that the Investigation report has not quantified the profit/ loss for the nature of violations / transactions carried out by the noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the fraudulent practices and non-genuine transactions.

28. From the trade volume of the noticee it is seen that he had purchased 1,84,695 shares (which amounted to 15.59% of the market volume) and sold 1,72,500 shares (which amounted to 14.56 % of the market volume) through synchronized/ circular/ reversal trades,. In fact, the objective of such non genuine/ synchronized/ circular/ reversal trades, as has been undertaken by the group, is to create a false impression about the value of the scrip/ demand for the scrip and then take advantage of it, since the common investors will be vulnerable to be mislead by the falsely created high volume. In this case the group indulged in this fraudulent activity and

the noticee was an active member of the group which is quite evident from his high volume of trading.

29. In view of the above, I impose a penalty of Rs. 2,50,0000 (Rupees Two Lakhs Fifty Thousand) only on the noticee under Section 15 HA of the Securities and Exchange Board of India Act, 1992, which is appropriate in the facts and circumstances of the case.

ORDER

30. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I impose a penalty of Rs. 2,50,0000 (Rupees Two Lakhs Fifty Thousand) only on Manoj T. Shah having address at 84, Jain temple, Taluk: Kalol, Post: Pansar- 382740, Mehsana, Gujarat in terms of the provisions of Section 15HA of the Securities and Exchange Board of India Act,1992 for its failure to abide by the provisions of Regulations 3, 4 (b), of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Regulations 4(1), 4(2)(a), (b) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticee.

31. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the General Manger- ID-8 , Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

32. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by

Adjudicating Officer) Rules 1995, copies of this order are being sent to Shri Manoj T. Shah and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: August 07, 2009

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER